

SERVED: October 1, 2003

NTSB Order No. EA-5059

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of September, 2003

Petition of)

PETER RASMUSSEN)

for review of the denial by)
the Administrator of the)
Federal Aviation Administration)
of the issuance of an airman)
medical certificate.)

Docket SM-4510

OPINION AND ORDER

The petitioner, pro se, has appealed from the written decision Administrative Law Judge William A. Pope, II, served in this proceeding on December 6, 2002.¹ By that decision, the law judge granted a motion by the Administrator for summary judgment, concluding that there were no issues of fact or law for resolution at a hearing. We will affirm the law judge's order.

The Federal Air Surgeon's denial of petitioner's application for a medical certificate was predicated on his history of

¹A copy of the law judge's decision is attached.

psychosis, a circumstance which renders applicants ineligible for airman medical certification under sections 67.107(a)(2), 67.207(a)(2) and 67.307(a)(2) of the Federal Aviation Regulations, "FAR," 14 C.F.R. Part 67.² The law judge's ruling reflects careful consideration of the airman medical records submitted in support of the Administrator's position that the petition for review should be dismissed. They unequivocally establish petitioner's history of the specifically disqualifying mental condition.

Petitioner did not, in response to the motion for summary judgment, contend that he had evidence to contradict the diagnosis in the medical records relied on by the Administrator. Rather, petitioner simply raised questions that he believed might provide a different explanation for conduct his doctors construed as constituting psychotic behavior. Indeed, aside from petitioner's personal, lay opinion that his hospitalizations in 1996 and 1997 did not demonstrate that he suffered from

²Under FAR sections 67.107(a)(2), 67.207(a)(2) and 67.307(a)(2), an individual who has an established medical history or clinical diagnosis of a psychosis does not meet the mental standard for any of the three classes of medical certificate. The regulations define "psychosis" as referring to a mental disorder in which:

- (i) The individual has manifested delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition; or
- (ii) The individual may reasonably be expected to manifest delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition.

psychosis, petitioner identified no relevant reason for doubting the medical validity of the judgments of his treating physicians.

Similarly, petitioner's appeal to the Board from the law judge's decision points to no medical evidence which would compel or support a different assessment of the behavior that formed the basis for the clinical diagnosis that led to the denial of his medical certificate application.³ Instead, his filing appears to reflect a belief that a hearing would have afforded him the opportunity to challenge, through reliance on nothing more than his own personal disagreement with the conclusions of the medical professionals who treated him, the medical assumptions underlying their diagnosis. He is mistaken for at least two reasons.

This is not a case in which a predictive medical judgment of the Federal Air Surgeon is on the line. That is, the petitioner was not denied a medical certificate because he has a condition that the Federal Air Surgeon determined is not compatible with the safe exercise of a pilot certificate.⁴ Rather, it is a case

³Petitioner's appeal does not satisfy the requirement of our rules that an appeal brief "enumerate the appealing party's objections to the law judge's initial decision or appealable order, and shall state the reasons for such objections, including any legal precedent relied upon in support thereof" (Rule 821.48(b)(2), 49 C.F.R. Part 821). Indeed, the petitioner's appeal does not even mention the law judge's decision.

⁴Compare FAR sections 67.113, 213 and 313, "General medical condition," which set forth the standard the Federal Air Surgeon employs in assessing whether an individual who has a medical condition that is not specifically disqualifying should be certificated:

in which the medical regulations themselves incorporate a judgment that individuals with a particular mental health history pose such an unacceptably high risk to air safety that airman certification is barred. Consequently, where, as in this matter, there is no dispute over whether the petitioner in fact received a diagnosis that is specifically disqualifying, a hearing would rarely be warranted, as the Board's process is not for the re-litigation of medical assessments that the Federal Air Surgeon did not make.

Secondly, in those instances in which a medical judgment of the Federal Air Surgeon is appropriately challenged before the Board, a petitioner, in order to meet his burden of proof, ordinarily would be expected to produce competent medical evidence in support of his position that he is qualified for medical certification. It is clear from petitioner's submissions that he was not prepared to do so.

As petitioner's pleadings do not establish any error in the law judge's decision to grant summary judgment and dismiss the

(..continued)

(b) No other organic, functional, or structural disease, defect, or limitation that the Federal Air Surgeon, based on the case history and appropriate, qualified medical judgment relating to the condition involved, finds --

(1) Makes the person unable to safely perform the duties or exercise the privileges of the airman certificate applied for or held; or

(2) May reasonably be expected, for the maximum duration of the airman medical certificate applied for or held, to make the person unable to perform those duties or exercise those privileges.

appeal, his decision will be sustained.

ACCORDINGLY, IT IS ORDERED THAT:

1. The petitioner's appeal is denied; and
2. The order of the law judge is affirmed.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.